



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,973	02/04/2004	Steven C. Shanks	206-024	5207
33354	7590	03/20/2006		
ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER
DATE MAILED: 03/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,973

Applicant(s)

SHANKS ET AL.

Examiner

Henry M. Johnson, III

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-6, 10, 14-29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-6, 10, 14-29, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 081205.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Response to Arguments***

Applicant's arguments filed 2/28/2006 have been fully considered.

The indicated allowability of claims 4-6, 10 and 14-19 is withdrawn in view of the newly discovered references to O'Meara and Yayama. Rejections based on the newly cited references follow.

The finality of the previous office action is withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,077,219 to O'Meara. O'Meara discloses a handheld laser light unit including a case containing a green laser (cool) and a red laser (warm) that each include an optic lens for directing the generated laser light. The lenses each comprise a glass plano-convex cylindrical lens having an aspherical cylindrical convex surface which is critical for generating a laser line which is uniformly illuminated from end to end (Col. 7, lines 28-36).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3739

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,836,081 to Orosz in view of U.S. Patent 6,077,219 to O'Meara. Orosz discloses a handheld laser device that generates a linear beam with a dual embodiment (Fig. 5) wherein both beams operate simultaneously. Orosz does not teach a cool and warm color wavelength for the beams. O'Meara is discussed above and teaches green and red linear beams. It would have been obvious to one skilled in the art to use the multiple colors for the beams as taught by O'Meara in the device of Orosz to clearly identify the beams as they are rotationally oriented.

Claims 10 and 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,582,454 to Yayama in view of U.S. Patent 6,267,779 to Gerdes. Yayama teaches a device for treating the parasympathetic nervous system using Blue, green and red lasers (paragraph 0014), independently controlled by a drive control unit (Fig. 2, # 2). The laser power is from 1 to 5 mW and pulse rates from a few Hz to 1KHz (paragraph 0036). Optics are provided for each beam to condense the beam (paragraph 0031), such condensing being interpreted as shaping the beam. Yayama does not teach different spot shapes. Gerdes discloses an apparatus for therapeutic laser treatment that includes handheld wands (Fig. 7) that each may deliver two wavelengths of laser energy. The beams are combined and delivered to the wands, which include adjustable optics to focus and shape the beams (Col. 8, lines 31-34). The beam shape may be circular or rectangular (Col. 9, line 49), or a variety of other patterns. The rectangular shape is interpreted as a linear shape. A controller for the sources is disclosed that may control the pulse parameters, including, continuous or pulsed, pulse duty cycle and duration of application for each of the radiation sources synchronously or independently with continuous operation possible by selection of a duty cycle of 100 percent (Col. 11, lines 3-8). Specifically mentioned is a pulse frequency of one hertz (Col. 11, line 63).

It would have been obvious to one skilled in the art to use the various beam shapes as taught by Gerdes in the invention of Yayama as both seek to treat tissue areas that would dictate the size and shape for the proper exposure.

Claims 20- 26, 29 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,582,454 to Yayama in view of U.S. Patent 5,150,704 to Tatebayashi et al. Yayama is discussed above, but does not teach a support means with three-dimensional positioning. Tatebayashi et al. teach a laser therapeutic apparatus for treating a patient by irradiating selected body parts by laser radiation, the laser diode sources being supported by a common support table (abstract). The table teaches a support means positionable in the X, Y and Z axis (Col. 2, line 60). The laser probes include a laser diode, a driver circuit, and one or more optical lenses (Col. 8, lines 6-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the support as taught by Tatebayashi et al. with the invention of Yayama to relieve the doctor of the task of holding the probes as disclosed by Tatebayashi et al. to better focus the treatment and reduce human error.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,582,454 to Yayama in view of U.S. Patent 5,150,704 to Tatebayashi et al as applied to claim 20 above and further in view of U.S. Patent 6,267,779 to Gerdes. All have been previously discussed. It would have been obvious to one skilled in the art to use the various beam shapes as taught by Gerdes in the invention of Yayama in view of Tatebayashi et al. as all seek to treat tissue areas that would dictate the size and shape for the proper exposure.

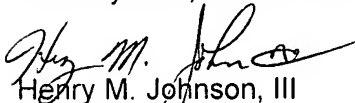
Art Unit: 3739

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739